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Letter Ruling 98-17: Photofinishing Equipment - Manufacturing Exemption

November 4, 1998

You request a letter ruling on behalf of ***** concerning the sales and use tax as it applies to the purchase of photograph finishing equipment ("photofinishing equipment") used in developing film in ***** one-hour photographic laboratories ("photo labs").

I. Facts

***** operates retail stores in Massachusetts that sell health and beauty aids, prescription drugs, convenience foods, and other items. You state that there is a photo lab in some of these retail stores, and there are plans to install new labs as stores are being remodeled. ***** purchases photofinishing equipment for use in these photo labs. You state that the photo labs are located behind a counter in the retail store. The counter is distinguished from other areas of the store by a sign and different color material used for the counter. There is no wall separating the photo lab from other retail areas. The photo lab is used for developing film, producing negatives, and creating finished prints. The photo lab is also used for retail activities, such as selling finished photographs, selling film and other photography supplies, and for making retail sales of other items sold in the store.

You state that employees who operate the photofinishing equipment receive three days of specialized training, receive a salary differential, and are known as "lab technicians" or "lab supervisors." In addition to operating the equipment, you state that the employees also perform retail activities, such as selling the finished photographs and photography supplies from behind the counter. When not busy performing photofinishing activities, these employees help with normal retail functions.

II. Discussion of Law

Massachusetts imposes a five percent sales tax on the sale of tangible personal property in the state, unless otherwise exempted. G.L. c. 64H, § 2. If no sales tax is paid on the purchase of tangible personal property, a complementary five percent use tax is imposed on the storage, use, or other consumption of the property in Massachusetts. G.L. c. 64/ § 2.

A sales and use tax exemption exists for the sales of machinery used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. G.L. c. 64H, § 6(s). An exemption also exists for the sales or use of materials, tools, and fuel which become an ingredient or component part of tangible personal property to be sold or which are consumed and

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used in an industrial plant in the actual manufacture of tangible personal property to be sold. G.L. c. 64H, § 6(r). An “industrial plant” is defined as a “factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business.” G.L. c. 64H, § 6(r), (s).

For the exemptions to apply, the machinery must be used exclusively in an industrial plant. While equipment that produces finished photographs to be sold would be “machinery” within the meaning of the exemption, the photo lab you describe does not qualify as an industrial plant, and thus the exemption does not apply. A manufacturing area must be sufficiently separated, both physically and functionally, from non-manufacturing areas to be considered an industrial plant within the meaning of the statute. In your case, there is no physical separation between the photo lab and the retail store; the photo lab is a section of the store, behind the retail counter. The photo lab is not primarily engaged in the manufacture of tangible personal property; both retail and manufacturing activities take place in the photo lab area. In addition, the photo lab employees, while they do receive some specialized training, are not sufficiently distinguished from retail employees to consider them indicative of the existence of an industrial plant.

III. Conclusion

The purchase by ***** of photofinishing equipment to be used in ***** photo labs is not exempt from Massachusetts sales and use taxes and is taxable within the meaning of G.L. c. 64H and 64I. For the sale or use of the equipment to enjoy the statutory exemption it must be used in an industrial plant, as that term is defined in G.L. c. 64H, § 6(r), (s). Since the photo lab does not meet the statutory definition of industrial plant, in that it is not a factory at a fixed location, and is neither physically nor functionally separated from the retail activities in the stores, the exemption does not apply.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:dt

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